

## Message Text

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INFO OCT-01 ISO-00 /001 R

DRAFTED BY DG/PER:HGAPPLING:LP

APPROVED BY M:LSEAGLEBURGER

S/S-O P JOHNSON

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FM SECSTATE WASHDC

TO USDEL SECRETARY PRIORITY

C O N F I D E N T I A L STATE 163204 TOSEC 060084

NODIS

CHEROKEE

E.O. 11652:N/A

TAGS: APER

SUBJECT: RESIGNATION OF GRIEVANCE BOARD

FOR THE SECRETARY FROM EAGLEBURGER

1. YOU SHOULD KNOW THAT ALL PUBLIC MEMBERS OF THE FOREIGN SERVICE BOARD HAVE SUBMITTED THEIR RESIGNATION BY LETTER SENT TO YOU JULY 9 (TEXT SENT SEPARATELY) BECAUSE OF NON-COMPLIANCE BY AID WITH ONE OF THEIR RULINGS. GRIEVANCE BOARD WAS SET UP THREE YEARS AGO ON INTERIM BASIS PENDING AGREEMENT BETWEEN DEPARTMENT AND AFSA ON PERMANENT PROCEDURE FOR DEALING WITH EMPLOYEE GRIEVANCES IN THREE FOREIGN AFFAIRS AGENCIES (DEPT, AID, USIA). IT WAS MADE UP OF 6 PUBLIC MEMBERS EXPERT IN FIELD, TWO MEMBERS EACH OF THREE FOREIGN AFFAIRS AGENCIES AND CHAIRED BY EMINENT LABOR MEDIATOR, WILLIAM SIMKIN. RESIGNATION WAS PRECIPITATED BY A COMPLICATED CASE IN WHICH AID DECLARED ITSELF AFTER MONTHS OF DELAY AS LEGALLY UNABLE TO COMPLY WITH GRIEVANCE BOARD DECISION, BUT WOULD REQUEST RULING FROM GENERAL ACCOUNTING OFFICE. GRIEVANCE BOARD DISPUTED AID'S INTERPRETATION AND  
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SAW ITS ACTION, GIVEN BACKGROUND OF DILATORY AID RESPONSE,

AS PRIMARILY EVASIVE AND UNDERMINING AUTHORITY OF BOARD.  
AFSA JULY 9, NEWS RELEASE PUT MAIN BLAME ON AID FOR

"DESTRUCTION OF GRIEVANCE SYSTEM" BUT CONTENTED DEPARTMENT  
COULD HAVE TAKEN MATTER OUT OF AID'S HANDS AND SAVED THE  
SITUATION. REFERENCE IS TO EARLIER AFSA SUGGESTION TO US  
AND TO GRIEVANCE BOARD THAT YOU STEP IN TO OVERRULE AID'S  
ACTION AS AUTHORIZED IN BASIC FOREIGN ASSIS-  
TANCE LEGISLATION. ON BASIS ADVICE OF OUR LAWYERS I CON-  
CLUDED THAT AID'S LEGAL QUESTIONS CONCERNING BOARD ORDER  
HAD ENOUGH VALIDITY THAT I COULD NOT RECOMMEND YOU TAKE  
SUCH ACTION. AFSA WAS INFORMED OF THIS VIEW AND GRIEVANCE  
BOARD DID NOT PURSUE SUGGESTION.

2. WHILE BOARD IS WILLING TO ACT ON PENDING CASES,  
RESIGNATION WILL SOON LEAVE US WITHOUT MACHINERY TO DEAL  
WITH NEW EMPLOYEE GRIEVANCES. THIS INTENSIFIES PRESSURES  
TO LEGISLATE GRIEVANCE SYSTEM ALREADY INTRODUCED BY  
SENATOR BAYH, PASSED IN SENATE IN PAST YEARS, KILLED IN  
HOUSE AND NOW REINTRODUCED AS AMENDMENT TO DEPARTMENT  
AUTHORIZATION BILL.

3. CERTAIN FEATURES OF THE BAYH BILL AS INTRODUCED ARE  
CLEARLY UNACCEPTABLE TO US. MOST IMPORTANT OF THESE ARE  
INCLUSION OF FOREIGN SERVICE PROMOTIONS AND INDIVIDUAL  
ASSIGNMENTS IN GRIEVANCE PROCEDURE, BOARD RETROACTIVE  
ACCESS FOR SEPARATED PERSONNEL, PROVISION FOR THE GRIEVANCE  
BOARD TO REQUIRE AN AGENCY TO SUSPEND ANY GRIEVANCE- RE-  
LATED ACTION PENDING ABOARD RULING ON THE GRIEVANCE, AND A  
REQUIREMENT FOR HEARINGS IN ALL CASES. ON THE OTHER HAND  
THE BILL SPECIFICALLY PROVIDES FOR JUDICIAL REVIEW IN A  
WAY WHICH WOULD PREVENT AN IMPASSE SUCH AS LED TO BOARD  
RESIGNATIONS (A BASIC WEAKNESS OF THE PRESENT SYSTEM).

4. WE HAVE BEEN WORKING WITH BAYH STAFF TO GET LANGUAGE  
MODIFIED AND SO FAR WE HAVE AGREEMENT TO ELIMINATE MOST  
OF THE UNACCEPTABLE PROVISIONS. MAIN POINT REMAINING OPEN  
IS RETROACTIVITY, WHICH WOULD PERMIT EMPLOYEES SEPARATED  
YEARS AGO TO RAISE QUESTIONS OF DUE PROCESS AND DEMAND  
REINSTATEMENT OR COMPENSATION. THIS IS UNACCEPTABLE, AND  
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SENATOR BAYH IS AWARE THAT ANY BILL UNACCEPTABLE TO US IS  
LIKELY TO BE OPPOSED IN HOUSE (SPECIFICALLY, BY WAYNE  
HAYS).

5. AFSA IS PRESSING NOW FOR JOINT ACTION WITH DEPARTMENT  
TO SUPPORT PROPOSED LEGISLATION. WE HAVE MADE IT CLEAR  
TO AFSA THAT WE ARE WILLING UNDER CIRCUMSTANCES TO TRY  
LEGISLATIVE ROUTE BUT WE WILL OPPOSE LEGISLATION WHICH

INCLUDES ANY POINTS UNACCEPTABLE TO US. ON THIS BASIS  
DISCUSSIONS HAVE BEEN RESUMED WITH AFSA. IF WE REACH  
AGREEMENT, WE WILL TALK JOINTLY WITH BAYH STAFF MONDAY

BEFORE AUTHORIZATION BILL IS MARKED UP TUESDAY. IF NO  
AGREEMENT REACHED WE WILL GIVE BAYH OUR POSITION AND SEEK  
SUPPORT FOR IT IN HOUSE.

6. COMMENT: WHILE CAROL AND I WOULD HAVE PREFERRED TO TRY  
TO NEGOTIATE OUT A GRIEVANCE PROCEDURE WITH AFSA, WE HAD  
LARGELY COME TO THE VIEW THAT THERE WAS LITTLE CHANCE FOR  
A SUCCESSFUL NEGOTIATION--AT LEAST IN ANY TIME FRAME WE  
WERE PREPARED TO ACCEPT. CONSEQUENTLY, WE BOTH HAD PRETTY  
MUCH DECIDED THE ANSWER LAY IN LEGISLATION ANYWAY; WITH  
THIS LATEST DEBACLE WE ARE NOW CONVINCED OF IT. IF WE  
CAN GET THE LEGISLATION WE WANT SO MUCH THE BETTER; IF WE  
CANNOT, I AM REASONABLY CERTAIN THAT WAYNE HAYS WILL SEE  
THAT IT IS BOTTLED UP IN THE HOUSE. INGERSOLL

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**To:** SECRETARY  
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